

APPEAL NO. 043199
FILED JANUARY 28, 2005

This appeal after remand arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on September 14, 2004. The hearing officer determined that the appellant (claimant) sustained a compensable injury and that he had disability from April 22 through May 17, 2004, but did not have disability beginning May 18 and continuing through August 23, 2004. Both parties appealed. In Texas Workers' Compensation Commission Appeal No. 042498, decided November 22, 2004, the Appeals Panel affirmed the determinations that the claimant sustained a compensable injury and had disability from April 22 through May 17, 2004, but reversed and remanded for further consideration the determination that the claimant did not have disability from May 18 through August 23, 2004. On remand, the hearing officer again determined that the claimant did not have disability from May 18 through August 23, 2004. The claimant appealed, disputing the disability determination. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

In his appeal, the claimant contends that the hearing officer found that the claimant did not sustain an injury on the job. However, it was determined at a prior CCH that the claimant sustained a compensable injury on _____, and that determination was affirmed on appeal. Additionally, the parties stipulated at the CCH on remand that the claimant sustained a compensable injury on _____.

The claimant also appeals the determination that he did not have disability from May 18 through August 23, 2004, contending that the great weight of the evidence is contrary to that determination. Section 401.011(16) defines "disability" as "the inability because of a compensable injury to obtain and retain employment at wages equivalent to the preinjury wage." In her decision on remand, the hearing officer noted that the claimant accepted what appeared to be a full-duty job as a truck driver but only ended up driving on about four occasions during the disputed time period due to contract problems. The hearing officer further stated in the Background Information that the claimant was apparently able to return to a full-duty position on May 17, 2004, but was not earning preinjury wages due to a problem the employer had securing work, not due to any physical restrictions resulting from the compensable injury. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the finder of fact, the hearing officer resolves the conflicts in the evidence and determines what facts have been established. We conclude that the hearing officer's decision on the disability issue is supported by sufficient evidence and is not so against the great weight and preponderance of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

We affirm the decision and order of the hearing officer.

The true corporate name of the insurance carrier is **FINANCIAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**ALBERT SCOTT TAYLOR, PRESIDENT
OR
KENNETH RANDALL BERRY, TREASURER
12225 GREENVILLE AVENUE, SUITE 490
DALLAS, TEXAS 75243.**

Margaret L. Turner
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert W. Potts
Appeals Judge